



**Rubis Energy Kenya PLC (Formerly known as Kenol Kobil PLC v Trustees of Seif Bin Salim & 2 others (Environment & Land Case 128 of 2021) [2022] KEELC 3778 (KLR) (28 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 3778 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE 128 OF 2021**

**NA MATHEKA, J**

**JUNE 28, 2022**

**BETWEEN**

**RUBIS ENERGY KENYA PLC (FORMERLY KNOWN AS KENOL KOBIL PLC) ..... PLAINTIFF**

**AND**

**TRUSTEES OF SEIF BIN SALIM ..... DEFENDANT**

**AND**

**SEVEN TRUST GENERAL TRADING LIMITED . 1<sup>ST</sup> PROPOSED DEFENDANT  
CHIEF LANDS REGISTRAR ..... 2<sup>ND</sup> PROPOSED DEFENDANT**

**RULING**

1. The application is dated November 17, 2021 and is brought under order 1 rule 10 (2) and (4), order 8 rules 3 and 5, and order 40 rule 2 and order 51 rule 1 of the Civil Procedure Rules, 2010, sections 1A, 1B, 3A and 63 of the Civil Procedure Act, chapter 21 Laws of Kenya, article 40 of the Constitution 2010, section 101 of the Land Registration Act, 2012, section 13 of the Environment and Land Act number 19 of 2011 seeking the following orders;
  1. That this application be certified as urgent and service of thereof be dispensed with in the first instance.
  2. That the plaintiff be granted leave to amend and join Seven L General Trading Limited and the chief lands registrar, as the 2<sup>nd</sup> and 3<sup>rd</sup> defendants to these proceedings.
  3. That pending the hearing and determination of this application *interpartes*;



- a) An injunction do issue directed at 2<sup>nd</sup> defendant herein whether by themselves jointly or severally, their employees, beneficiaries of their interest in law or otherwise, servants or agents, howsoever by restraining them from removing or in any way interfering with the plaintiffs continued quiet possession and/or occupation and/or possession and operations and user of all that property Known as Msa/block XVI/300 (hereinafter referred to as “the suit property”) in a manner that would defeat the registered Lease dated June 13, 1963 made between the plaintiff and the 1<sup>st</sup> defendants;
  - b) An injunction do issue directed at 2<sup>nd</sup> defendant herein whether by themselves jointly or severally, their employees, beneficiaries of their interest in law or otherwise, servants or agents or any other person(s) acting under their directions and/or purporting to effect any dealings by way of licence, lease sale, transfer, charging, mortgaging, insisting on vacant possession in respect thereof, pledging or leasing or by way of issuing and/or enforcing eviction notice dated October 19, 2021 or such other notice or in any other way whatsoever dealing with the interest in the property all that property known as MSA/Block XVI/300 (hereinafter referred to as “the suit property”) in a manner that would defeat the registered lease dated June 13, 1963 made between the plaintiff and the 1<sup>st</sup> defendants;
  - c) An injunction do issue directed at 3<sup>rd</sup> defendant herein whether by themselves jointly or severally, their employees, servants or agents, howsoever by restraining them from registering the 2<sup>nd</sup> defendant’s interest and /or removing or in any way interfering with the plaintiffs registered interest over all that property known as MSA/Block XVI/300 (hereinafter referred to as “the suit property”) in a manner that would defeat the registered lease dated June 13, 1963 made between the plaintiff and the 1st defendant as well as the certificate of lease dated September 3, 2008;
4. That pending the hearing and determination of this suit;
- a) An injunction do issue directed at 2<sup>nd</sup> defendant herein whether by themselves jointly or severally, their employees, beneficiaries of their interest in law or otherwise, servants or agents, howsoever by restraining them from removing or in any way interfering with the plaintiffs continued quiet possession and/or occupation and/or possession and operations and user of all that property known as MSA/Block XVI/300 (hereinafter referred to as “the suit property”) in a manner that would defeat the registered lease dated June 13, 1963 made between the plaintiff and the 1<sup>st</sup> defendants;
  - b) An injunction do issue directed at 2<sup>nd</sup> defendant herein whether by themselves jointly or severally , their employees, beneficiaries of their interest in law or otherwise, servants or agents or any other person(s) acting under their directions and/or 56 purporting to effect any dealings by way of licence, lease sale, transfer, charging, mortgaging, insisting on vacant possession in respect thereof, pledging or leasing or by way of issuing and/or enforcing eviction notice dated October 19, 2021 or such other notice or in any other way whatsoever dealing with the interest in the property all that property Known as Msa/block XVI/300 (hereinafter referred to as “the suit property”) in a manner that would defeat the registered lease dated June 13, 1963 made between the plaintiff and the 1st defendants;
  - c) An injunction do issue directed at 3<sup>rd</sup> defendant herein whether by themselves jointly or severally, their employees, servants or agents, howsoever by restraining them from



registering the 2<sup>nd</sup> defendant's interest and /or removing or in any way interfering with the plaintiffs registered interest over all that property Known as Msa/block XVI/300 (hereinafter referred to as "the suit property") in a manner that would defeat the registered lease dated June 13, 1963 made between the plaintiff and the 1<sup>st</sup> defendant as well as the certificate of lease dated September 3, 2008;

5. That the draft amended plaint filed herewith be deemed to be duly filed upon the payment of the requisite fee and the summons to enter appearance do issue in respect of Seven L General Trading Limited and the chief lands registrar, the proposed 2<sup>nd</sup> and 3<sup>rd</sup> defendants herein;
  6. That an order do issue directed at the inspector general through the office commanding Mombasa police station or such other station with jurisdiction over the suit property for noting and enforcement;
  7. That this honourable court do give directions as to the inter parties hearing of this application alongside and/or together with the application dated July 5, 2021.
  8. That the costs of this application be costs in the provided for; and
  9. That this honorable court be pleased to make and give any such further orders and give such directions as maybe just and fair in the interest these proceedings.
2. It is based on the grounds that this honorable court having been satisfied that the plaintiff holds a duly registered leasehold interest over all that property Known as MSA/Block XVI/300 (hereinafter referred to as "the suit property") whose term is to expire on or about June 2062 did on July 7, 2021 issue an injunctive order by which it *inter alia* restrained the 1<sup>st</sup> defendant from acting on a termination notice dated May 27, 2021 and further expressly barred the said defendant.
  3. The said orders have neither been vacated, set aside nor appealed from and were in fact extended by consent of the parties. During the pendency of these proceedings and the orders issued herein on July 7, 2021, the defendants have undertaken the acts which unless further prohibited shall render the proceedings herein nugatory of the one part and illegally and/or unlawfully interfere with the Plaintiff's rights under the lease it holds over the suit property.
  4. The 1<sup>st</sup> defendant has without a surrender of lease being executed and registered against the suit property proceeded to offer the suit property for lease to the 2<sup>nd</sup> defendant. The defendants have illegally caused the registration of an illegal lease made between the 1<sup>st</sup> and 2<sup>nd</sup> defendants over the suit property. The 2<sup>nd</sup> defendant has issued notices threatening to evict the plaintiff from the suit property. The 3<sup>rd</sup> defendant has, in breach of his rights as an administrator, purported to make decisions that affect the registered leasehold interests of the plaintiff in respect to the suit property without affording it a right to be heard as envisaged under the Fair Administrative Act and the 1<sup>st</sup> defendant has purported to illegally and uncontractually terminate a fixed term lease midstream. The 1<sup>st</sup> defendant has and continues to receive rent from the plaintiff and the suit property is not available to lease to the 2<sup>nd</sup> defendant or such other person until after the end of the plaintiff's lease term in June 2062.
  5. The acts by the 2<sup>nd</sup> and 3<sup>rd</sup> defendant were discovered after filing suit herein and the issuance of the orders of July 7, 2021 with a disclosure being made by the Firm of Ndegwa & Sitonik Advocates on November 2, 2021 who, acting for the proposed 2<sup>nd</sup> defendant that Seven L General Trading Limited and the chief land registrar, the proposed 2<sup>nd</sup> and 3<sup>rd</sup> defendants herein are necessary parties to enable the court to effectually and completely adjudicate upon and settle all questions respecting the suit property of the one part and also ensuring that the suit property is preserved pending the hearing and determination of the proceedings herein. That the plaintiff having paid the due rents under the Lease



has invested heavily thereon and in fact has been running a service station thereon which business it is entitled to run uninterrupted until the end of the term of the lease in June 2062 as envisaged under the 8 lease.

6. The respondent stated that the plaintiff secured the court orders dated July 7, 2021 as against the 1<sup>st</sup> defendant seeking to restrain the 1<sup>st</sup> defendant and/or beneficiaries from *inter alia* transferring the suit property. That there was no direct or indirect violation of the court orders of July 7, 2021 because the events that the plaintiff was seeking to restrain had already taken place in the normal course of business. On May 27, 2021 the 1<sup>st</sup> defendant issued the plaintiff with a 30 days' Notice of termination of lease over the suit property. The termination of lease was due to breach of the terms of the lease by the plaintiffs. Annexed is a copy of the termination notice dated May 27, 2021 marked as "H-1. On June 28, 2021, and upon the effective termination of the plaintiff's lease, the 1<sup>st</sup> defendant entered into a lease agreement with the 2<sup>nd</sup> defendant over the suit property known as Msa/blqck/XVI/300 which lease was duly executed by the 1<sup>st</sup> defendant and the 2<sup>nd</sup> defendant on June 28, 2021. Annexed and marked as "H-2" is a copy of the duly certified registered lease. Immediately upon the signing of the agreement on June 28, 2021, and in compliance with clauses 5.2 and 5.4 of the lease agreement, the 2<sup>nd</sup> defendant paid a sum of kshs 100,000.00/= being the contractual yearly rent and an additional sum of kshs 100,000.00/= being the deposit. Annexed are copies of receipts numbers 8537 and 8538 both dated June 29, 2021 marked as "H-3 (a) & 3(b) confirming the payments to the 1<sup>st</sup> defendant. Consequently, the 1<sup>st</sup> defendant trustees completed their role in the transfer on June 28, 2021 and the 2<sup>nd</sup> defendant immediately took over possession of the suit property. On July 2 2021, the 2<sup>nd</sup> defendant presented the lease agreement for assessment for purposes of stamp duty and the 2<sup>nd</sup> defendant then made payment of the duly assessed Stamp duty on the same date of July 2, 2021 to facilitate the registration of the lease. Annexed are the true copies of the stamp duty payment slip and KCB deposit slip both dated July 2, 2021 marked "H-4 (a) & 4 (b)". On July 05, 2021, the lease as between the 1<sup>st</sup> defendant and the 2<sup>nd</sup> defendant was thus effectively registered by the 3<sup>rd</sup> defendant. That all the above mentioned events and processes occurred before the plaintiff filed the instant suit which suit was first lodged in court on July 6, 2021. That at the time of execution of the lease agreement, registration of the lease and taking of possession of the suit property, there were no court orders in place. The execution of the lease by the 1<sup>st</sup> and 2<sup>nd</sup> defendants and the subsequent registration of the lease by 3<sup>rd</sup> defendant was done lawfully and fully in accordance with the law governing registration of such leases. That the 2<sup>nd</sup> defendant took possession of the suit property on June 28, 2021 immediately after the signing of the lease agreement and the 2<sup>nd</sup> defendant has been operating within the suit property since June 28, 2021, and is still currently in occupation and possession of the suit property. The 2<sup>nd</sup> defendant is undertaking its business within the suit property and is in occupation of the office building therein. Annexed is a true photograph of the office block within the suit property. That the 2<sup>nd</sup> defendant has tenants who occupy shops/offices within the suit property and the tenants are operating transport companies within the property. Annexed as a bundle are the true copies of rental receipts marked "H-6". That the plaintiff was well aware or ought to have been well aware of the 2<sup>nd</sup> defendant's occupation of the property in June 2021 because during the subsistence of the lease agreement between the plaintiff and the defendant 1, the plaintiff had leased the property to Sas Africa General Trading Co ltd.
7. This court has considered the application and the submissions therein. The 3<sup>rd</sup> defendant did not file any submissions in this matter. I have perused the court file and find that on the December 3, 2021 the plaintiff and proposed 2<sup>nd</sup> defendant entered into a consent for the 2<sup>nd</sup> defendant to be enjoined even



though the same was not adopted as an order of the court. The provisions of order 1 rule 10(2) and (4) under which the application is brought provides as follows;

“(2) The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.

(4) Where a defendant is added or substituted, the plaint shall, unless the court otherwise direct, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendants”.

8. The court of Appeal in *Civicon Limited vs Kivuwatt Limited & 2 Others* (2015) eKLR stated that;

“the objective of these rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings”.

9. A more succinct test to be applied in answering the question of joinder was pronounced by the Court of Appeal in *Central Kenya Limited Vs West Bank Ltd & Others*, CA no 222 of 1998 as follows:-

“the paramount consideration is whether the party concerned is necessary for the effectual and complete adjudication of all the question involved in the suit.”

The Court of Appeal in *Meme vs Republic* (2004) KLR 637 outlined the following circumstances which would warrant grant of leave to enjoin a party:-

“(i) Where the presence of the party will result in the complete settlement of all the questions involved in the proceedings;

(ii) Where the joinder will provide protection for the rights of a party who would otherwise be adversely affected in law: and

(iii) Where the joinder will prevent a likely course of proliferated litigation.”

10. In *Central Kenya Ltd Vs Trust Bank Ltd & Others* CA no 222 of 1998 the Court of Appeal held that;

“the paramount consideration is whether the party concerned is necessary for the effectual and complete adjudication of all the questions involved in the suit.”

11. Looking at the circumstances of this case the plaintiff/applicant submits that in breach of the aforesaid orders of this court , the 2<sup>nd</sup> defendant (who claims to have obtained a leasehold interest from the 1<sup>st</sup> defendant and is thus bound by the aforementioned order) has vide a Notice issued on October 19, 2021 during the lease term (in favour of the plaintiff) and during the currency of the injunctive relief issued by this court purported to prematurely, illegally and without any order issued by any court, purported to direct the plaintiff to deliver vacant possession of the suit property within 14 days from the date of the illegal and/or unlawful notice hence the need for the court to intervene in the manner sought in the application filed herewith. The 3<sup>rd</sup> defendant herein has purported to register a 27 year



lease over the suit property in favour of the 2<sup>nd</sup> defendant whilst the plaintiffs 99 year lease is still subsisting and is due to lapse in June 2062. I find that the 2<sup>nd</sup> and 3<sup>rd</sup> defendants are reasonably affected by the litigation and that they are necessary and proper parties to be enjoined in this suit. It is also not disputed that the 2<sup>nd</sup> defendant is operating within the suit premises. From the application it would appear that the plaintiff is also in the premises. I find this application is merited and grant the following orders;

1. That the plaintiff be granted leave to amend and join Seven L General Trading Limited and the chief lands registrar, as the 2<sup>nd</sup> and 3<sup>rd</sup> defendants to these proceedings.
2. That the draft amended plaint filed herewith be deemed to be duly filed upon the payment of the requisite fee and the summons to enter appearance do issue in respect of Seven L General Trading Limited and the chief lands registrar, the proposed 2<sup>nd</sup> and 3<sup>rd</sup> defendants herein.
3. That the status quo be maintained pending the hearing and determination of this suit.
4. Costs of this application to be in the cause.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 28TH DAY OF JUNE 2022.**

**N A MATHEKA**

**JUDGE**

